

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY LC D.C.
05 JUL 26 PM 1:25

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. MEMPHIS

JEROME MILLER,

Plaintiff,

vs.

FEDERAL EXPRESS CORPORATION,
et al.,

Defendants.

X
X
X
X
X
X
X
X
X
X
X
X

No. 05-2487-B/P

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS
ORDER DENYING APPOINTMENT OF COUNSEL AS MOOT
ORDER OF DISMISSAL WITHOUT PREJUDICE
AND
ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH

On April 28, 2005, plaintiff Jerome Miller filed a pro se complaint asserting claims pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and for malicious harassment in violation of Tenn. Code Ann. § 4-21-701, against Federal Express Corporation, Craig Vogelsang, and Chris Marchlewski. Miller also filed motions to proceed in forma pauperis and for appointment of counsel. The complaint was docketed as Miller v. Federal Express Corp., et al., No. 05-2312-M/P and assigned to United States District Judge Samuel H. Mays, Jr. On July 13, 2005, Judge Mays entered an order granting the motion to proceed in forma pauperis, denying the motion for

This document entered on the docket sheet in compliance
with Rule 58 and/or 79(a) FRCP on 7-27-05

③

appointment of counsel, dismissing plaintiff's claims against individual defendants Vogelsang and Marchlewski, and directing that service issue against defendant Federal Express Corporation.

On July 11, 2005, plaintiff filed the present employment discrimination complaint against Federal Express Corporation, Vogelsang, and Marchlewski, along with motions to proceed in forma pauperis and for appointment of counsel. Based on the information set forth in the plaintiff's affidavit, the motion to proceed in forma pauperis is GRANTED. The Clerk shall record the defendants as Federal Express Corporation, Craig Vogelsang, and Chris Marchlewski.

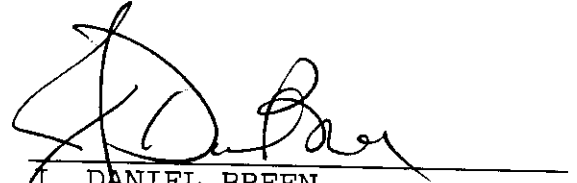
The Court's review of the complaint reveals that it is, word for word and page for page, identical to the complaint pending before Judge Mays. Judge Mays has previously considered and denied plaintiff's motion for appointment of counsel. Accordingly, the motion for appointment of counsel is denied as MOOT. Judge Mays is considering plaintiff's claims under docket number 05-2312-Ma/P. This case is duplicative and is therefore DISMISSED without prejudice.

The Clerk is directed to close this case and to file no further documents under this docket number. All pleadings pertaining to Miller's discrimination claim shall be filed under docket no. 05-2312-Ma/P.

As this dismissal is without prejudice, and as plaintiff's claims are being fully considered in case number 05-2312-Ma/P,

there is no basis for an appeal. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal is not taken in good faith and plaintiff may not proceed in forma pauperis on appeal.

IT IS SO ORDERED this 25th day of July, 2005.


J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 3 in case 2:05-CV-02487 was distributed by fax, mail, or direct printing on July 27, 2005 to the parties listed.

Jerome Miller
3071 DeWitt Cove
Memphis, TN 38118

Honorable J. Breen
US DISTRICT COURT